

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TOMO SHIBATA, et al.,

Plaintiffs,

3:16-CV-1349 (BKS/DEP)

v.

ROGER A. SWINGLE, et al.,

Defendants.

Appearances:

Plaintiffs, pro se:

Tomo Shibata
Yayoi Shibata
Alturas, CA 96101

Attorney for Defendants:

Alan J. Pope, Esq.
Pope, Schrader Law Firm
2 Court Street, 4th Floor
P.O. Box 510
Binghamton, NY 13902

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Presently before the Court is Plaintiffs' motion to dismiss the counterclaims asserted by Defendants. (Dkt. No. 58). Defendants consent to the requested dismissal, provided that dismissal is without prejudice. (Dkt. No. 97). This matter was assigned to United States Magistrate Judge David E. Peebles who, on October 23, 2018, issued a Report and Recommendation recommending that Defendants' counterclaims be dismissed without prejudice. (Dkt. No. 98). Magistrate Judge Peebles advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to

object to the report within fourteen days would preclude appellate review. (Dkt. No. 98, at 2–3). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts it in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 98) is **ADOPTED** in its entirety; and it is further


ORDERED that Plaintiffs’ motion to dismiss the counterclaims (Dkt. No. 58) is **GRANTED**; and it is further

ORDERED that Defendants’ counterclaims are **DISMISSED** without prejudice; and it is further

ORDERED that the Clerk is directed to close this action and serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: December 3, 2018
Syracuse, New York


Brenda K. Sannes
U.S. District Judge